

REQUEST FOR QUALIFICATIONS

MICHIGAN DEPARTMENT OF TRANSPORTATION

North Region

Construction Manager/General Contractor Project

US-31 over Pine River Bascule Bridge Rehabilitation

Job Numbers: 214317

Control Section: 15012

Federal Project Number:

Original Issue

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1 INTRODUCTION

The Michigan Department of Transportation (MDOT) is requesting Statements of Qualifications (“SOQs”) from entities (“Submitters”) interested in submitting proposals for Construction Manager / General Contractor (CMGC) services for the bascule bridge steel superstructure repairs including replacement of track and tread castings, rehabilitation of the existing segmental girders, high-capacity jacking and shoring of existing superstructure, electrical improvements, and develop an alternate/emergency operations plan for potential use during construction on US-31 over the Pine River in the City of Charlevoix, Charlevoix County (the “Project”). The Project will be funded with state and federal-aid dollars thereby requiring the Submitters adhere to all pertinent federal, state, and local requirements. MDOT has concluded that harnessing private-sector expertise and input through a collaborative CMGC approach is the best way to ensure cost-effective and expedited delivery of this Project to meet the Project goals.

1.1 Procurement Process

MDOT intends, through this procurement, to enter into a Contract that will result in cost-effective and expedited completion of all elements of the Project. The Contract will obligate the CMGC to perform the pre-construction services outlined in Section 3.2 and be responsible for the final construction of the project if an agreement on price is reached. This Request for Qualifications (RFQ) is issued to solicit information, in the form of SOQs, that MDOT will evaluate to determine which Submitter is most qualified to successfully deliver the Project.

The purpose of utilizing this innovative delivery method is to benefit the public and Project by:

- Utilizing contractor expertise for complex construction operations.
- Providing an expedited construction schedule.
- Better predict the required rehabilitation durations and costs.
- Minimize impacts to both marine traffic and vehicular traffic.
- Coordinate closely with the City of Charlevoix.
- Coordinate closely with the U.S. Coast Guard.

It is beneficial to have the CMGC contractor engaged during the design of the project, to review the in-process design plans, discuss means and methods, constructability, and feasibility of all the work planned.

MDOT staff, with the assistance of a design consultant, is in the process of preparing design plans. The design phase has not started. MDOT will procure a separate Independent Cost Estimator (ICE), with whom MDOT and the CMGC will collaborate with throughout the design phase of the Project.

As the design nears completion, (approximately 70% to 90% final plans) the selected CMGC will prepare and submit a Construction Services Cost Proposal (CSCP) in accordance with Section 3.3 in order to begin final price negotiations. Subject to a successful price negotiation with MDOT, the CMGC will be awarded the construction portion of the project and responsible to complete the construction while directly performing at least 40 percent of the work. The remaining portion of work may be completed by subcontractors. If an acceptable Construction Service Cost Proposal cannot be reached, the project will be advertised following MDOT’s normal design-bid-build process.

By submitting a Statement of Qualifications (SOQ), Submitters agree to be bound by the requirements outlined in this Request for Qualifications (RFQ), be held to any commitments made in a submitted SOQ and shall satisfy all requirements developed during the design phase of the Project. Failure of the Submitter to meet these requirements may result in rejection of the CMGC process, and the Project may be advertised following MDOT’s normal design-bid-build process.

1.2 Project Goals

The following goals have been established for the Project:

- A. Rehabilitate the bridge girders, keeping the girder alignment within tolerances that will allow continued

operations.

- B. Mobility - Minimize and accurately predict the impacts to US-31 traffic and marine traffic.
 - i. Minimize duration of vehicle detour.
 - ii. Comply with all Coast Guard Requirements.
- C. Engage the local community, businesses, and public to limit the impacts from the project.
- D. Minimize environmental impacts
 - i. Minimize impacts to pedestrians and avoid any impacts to the river bottom.
- E. Safety
 - i. Provide a safe Project area for the traveling public and workers during execution of the Project
 - ii. Provide a solution consistent with current MDOT, FHWA, EGLE, OSHA, and AASHTO practices, guidelines, policies, and standards.
- F. Quality - Provide a high-quality product that minimizes future maintenance
- G. Budget - Complete the Project within MDOT's established budget
- H. Meet Project schedule

Failure to address or determine the means to accomplish these goals during the pre-construction phase may lead to the Project being advertised by MDOT's traditional design-bid-build process instead of having the project constructed by the selected CMGC.

2 BACKGROUND INFORMATION; RFQ PROCESS

2.1 Project Description; Scope of Work

The Project is located along US-31 in the City of Charlevoix, Charlevoix County, and includes construction for the following major items of work:

- Replacement for the track and tread castings, including temporary supports.
- Repair segmental girder flanges and web in all four quadrants
- Replace deck compression seals
- Remove and replace concrete near sidewalk breaks over the girders
- Re-shim live load bearings, center jaw and diaphragms.
- Replace motor starters.
- Replace relays
- Replace conduits and conductors from sub cable boxes to the pull box for motor room.
- Clean the existing vehicle barrier railings.
- Curb patching.

The Project scope encompasses 2 project number(s) and 1 control section(s) as follows:

JN 214317, CS 15012: The design and construction of US-31 over Pine River in the City of Charlevoix.

JN 214773, CS 15012: The early procurement of the track and tread casting for US-31 over Pine River in the City of Charlevoix, based on a letting of June 2022.

Traffic is expected to be maintained with the following restrictions:

- Do not violate the City of Charlevoix Noise Ordinance, unless otherwise approved by the Engineer and the Charlevoix City Manager. The contractor must minimize vehicular, pedestrian, and marine detours. When possible, keep vehicular traffic restrictions between 11:50pm and 5:30am.
- Contractor may be required to make special accommodations for emergency services.
- Marine traffic restrictions coordinate with US Coast Guard. MDOT has received an authorization to secure the bridge from January 16, 2023 to April 1, 2023.

Project information and data is included in attachments as follows:

- Attachment A – Location Map
- Attachment B – Preliminary Reference Information Documents (RID)

Reference Information Documents (RID) and reference to any website (including the Project Webpage) in this RFQ are provided for reference and background information only. MDOT has not determined whether the RID are without error, complete, pertinent, or of any other value to potential CMGCs. MDOT makes no representation as to the accuracy, completeness, or pertinence of the RID or information in any referenced website (including the Project Webpage), and, in addition, shall not be responsible for any interpretations thereof or conclusions drawn therefrom. The information contained in the RID or set forth in any referenced website (including the Project Webpage) reflects information as of any date or time identified therein.

The RID provided are in draft format and are being provided for informational purposes only. The RID provided are subject to revision, correction, or alteration. MDOT may not provide notification of such changes. The RID provided will not be used or relied upon for bidding or estimating purposes, nor will they otherwise be considered contractual or binding in nature.

Submitter Introduction Form, that they have received and reviewed all Addenda posted thereon.

News Releases:

Any news releases pertaining to this RFQ or the services, study, data or project to which it relates will not be made without prior written MDOT approval, and then only in accordance with the explicit written instructions from MDOT.

Observers During Evaluation:

Submitters are advised that observers from federal or other agencies affected by the Project and local governmental entities, may observe the SOQ evaluation process and will have the opportunity to review the SOQs after the SOQ Due Date.

Disclosure:

All information in a Submitter's SOQ and any contract resulting from this RFQ are subject to disclosure under the provisions of the "Freedom of Information Act," 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

2.4 Prequalification

The Submitter must meet the following prequalification requirements:

- 4200 Fa

2.5 Major Participants

As used herein, the term "Major Participant" means any of the following entities: all general partners or joint venture members of the Submitter; all individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 30% or greater interest in the Submitter; and any subcontractor(s) that will perform work valued at 30% or more of the overall contract amount .

2.6 Project Team

The Project Team, as referenced herein, is composed of MDOT staff, Modjeski and Masters, the ICE, the CMGC, potentially key subcontractors to the CMGC, and any additional Project stakeholders.

MDOT has retained the following consultants to prepare the design: Modjeski and Masters

2.7 Conflicts of Interest

The Submitter shall include a full disclosure of all potential organizational conflicts of interest in the SOQ.

The Submitter shall complete a Conflict of Interest Statement (See Attachment C) certifying that they have read and understand MDOT's policy regarding conflict of interest and that each Major Participant has done the same. The Submitter shall certify that they and each Major Participant have no conflict of interest with the Project. If there is a conflict with the Project, then the Submitter needs to describe the conflict.

The Submitter agrees that, if after award, an organizational conflict of interest is discovered, the Submitter shall make an immediate and full written disclosure to MDOT that includes a description of the action that the Submitter has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, MDOT may, at its discretion, cancel the CMGC contract for the Project. If the Submitter was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MDOT, MDOT may terminate the contract for default.

MDOT may disqualify a Submitter if any of its Major Participants belong to more than one submitting team.

2.8 Changes to Organizational Structure

All changes in Key Personnel or a Major Participant from the selected CMGC's SOQ during the pre-construction or construction phase of the Project shall be approved by MDOT in writing by submitting Form 5100G. It is

expected that Key Personnel presented in the SOQ will be available for the duration of the project. MDOT may revoke an awarded contract if any Key Personnel or Major Participant identified in the SOQ is removed, replaced, or added without MDOT's prior written approval. To qualify for MDOT approval, the written request shall document that the proposed removal, replacement, or addition will be equal to or better than the Key Personnel or Major Participant provided in the SOQ. MDOT will use the criteria specified in this RFQ to evaluate all requests. Form 5100G Changes in Key Personnel shall be submitted to MDOT's Innovative Contracting Project Manager as identified in Section 2.3 (Forms can be found at this website:

<https://mdotjboss.state.mi.us/webforms/WebFormsHome.htm>).

2.9 Federal Requirements

Submitters are advised that the Project will be eligible for federal-aid funds. Therefore, the procurement documents and the Contract shall conform to requirements of applicable federal law, regulations, and policies. MDOT anticipates that certain federal procurement requirements will apply, including but not limited to Equal Opportunity requirements (Title VI of the Civil Rights Act of 1964, as amended), requirements applicable to DBEs (Title 49 Code of Federal Regulations Part 26, as amended), Small Business requirements (United States Code Sections 631 et seq.), Buy America requirements (49 Code of Federal Regulations Part 661) and Davis-Bacon wage rates. MDOT reserves the right to modify the procurement process described herein to address any concerns, conditions, or requirements of federal agencies, including the Federal Highway Administration ("FHWA"). Proposers shall be notified in writing via an addendum of any such modifications.

2.10 Equal Employment Opportunity

The Submitter will be required to follow both State of Michigan and Federal Equal Employment Opportunity (EEO) policies.

2.11 Disadvantaged Business Enterprises

It is the policy of MDOT that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, MDOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT)-assisted contract because of sex, race, religion, or national origin. MDOT has established a DBE program in accordance with regulations of the DOT, 49 CFR Part 26. In this regard, the Submitter will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform the contract.

MDOT anticipates that the Pre-Construction services will have a **DBE goal of 0%**.

Construction services DBE Percentage and goals for minority and women will be determined during the pre-construction phase.

3 SCOPE OF SERVICES

3.1 Design Responsibility

The CMGC is being selected early in the project to join the Project Team. The CMGC will not be expected to be the designer of record for the project, but is expected to provide the Project Team with construction expertise and technical experience to assist in project decision-making, ensure the technical challenges are addressed, and provide input on items affecting construction costs, schedule, constructability and market conditions. MDOT has hired Modjeski and Masters to perform the design work.

3.2 Phase 1 – Pre-Construction Services

The CMGC shall consult with the Project Team during the design phase in order to develop, implement, and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all. The Pre-Construction Services Fee is described in Section 7.1. The CMGC shall deliver pre-construction services by performing the following: review and analyze in-progress design, details, and specifications developed by MDOT's design consultant and provide input. MDOT is looking for the CMGC's input to:

- Identify potential construction and constructability issues and risks for each to assist the Project Team in selecting the appropriate design for the Project.
- Evaluate options for emergency openings when the segmental girder tread plates are removed and supported.
- Provide alternate design concepts and offer suggestions with respect to the means and methods, materials, innovations, maintaining traffic concepts, and construction sequencing to improve efficiency, cost effectiveness, completeness or clarity.
- Provide input to the Project Team regarding current construction industry practices, labor market, and material and equipment availability.
- It is allowable to use subcontractors or design consultants to supplement pre-construction services in order to provide necessary expertise. The hours for the contractor's design consultant are expected to be limited. Critical or key subcontractor involvement is desired during the preconstruction phase.
- Notify the MDOT Project Manager, in writing, of all problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Assist the MDOT Project Manager and design team in resolving problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Provide construction estimates, and supporting documentation if requested, when the plans are 90% complete at the final cost negotiation stage. Unless otherwise approved by MDOT, the estimates will provide a unit price on standard MDOT pay items. If items of work cannot be estimate at these stages, provide a report of what the items are, the reasons a price cannot be estimated, and factors which will impact the item's pricing.
- Provide a coordination letter that states assumptions including the breakdown/distribution of indirect costs, personnel (crew size, shift length), equipment and rates (e.g. blue book rates), materials including sales tax, subcontracts, and any other considerations (inflation, contingency, etc.)
- Provide a written report of items MDOT should consider improving any aspect of the project. At a minimum, the reports are to be submitted to the Project Manager after reviewing the 90% plans and specifications.
- Submittal of Shop Drawings: If approved by the MDOT Project Manager, the CMGC can provide shop drawings for review, comment and approval during the preconstruction phase.
- Develop a preliminary Schedule of Values. At a minimum, the Schedule of Values must incorporate the below items unless otherwise approved by MDOT. If proposed, other payment mechanisms will be considered for approval.
 - Be described, in writing, with sufficient detail of the specific work included in the Schedule of

- Value Item and the limits of the Schedule of Value items so it can be accurately performed, tracked, invoiced and paid
 - Identification of when payment can be requested and payment can be paid
 - Identify the estimated dollar value associated with the Schedule of Value Item
 - Be able to be identified in a CPM Schedule
- Develop a baseline CPM schedule during design using software agreed to by MDOT. This schedule will be used to analyze the impacts of maintaining traffic alternatives and demonstrate the constructability of the project within the allotted project milestones. The contract will include the Special Provision for Critical Path Method Network Schedule, so it is expected that the CMGC if awarded the contract will be able to use the baseline CPM developed during design as the baseline CPM for construction. In the event the CMGC is not awarded the contract, the design CPM will become the property of the Department.
- Provide a final review and evaluation of the final plans and construction documents. Provide a written final review of the plans to demonstrate that the final plans, specifications, items of work, and quantities have been reviewed and are reasonable and accurate to complete the project. The project superintendent must be involved in the review and evaluation of construction documents.
- Provide staff to assist in the preconstruction phase that will be active and have a lead role in the field during construction.
- Work with MDOT to develop a communication plan within 7 days after the authorization to proceed with pre-construction services. The communication plan should clearly demonstrate how the CMGC and MDOT will work to convey information and establish a clear line of communication. The plan should also demonstrate how the CMGC and MDOT plan to include all parties with interest in the project, including, but not limited to the public, private utilities, and businesses. The plan will serve as the baseline for communication and be followed for both the pre-construction services and services during construction.
- The CMGC should expect to attend at least 15 pre-construction coordination meetings with the Project Team. The expected meetings are as follows:
 - Project Kickoff Meeting
 - Initial Site Visit within two weeks of award
 - Progress Meetings (monthly)
 - Final Project Coordination (FPC) Site Visit
 - FPC Meeting (approx. 70%) or equivalent
 - FPC Estimate Meeting
 - Final Plan Review Meeting (approx. 90%)
 - Final Estimate Meeting
 - Community Outreach Meetings
 - Phone Meeting with Regulatory Agency (US Coast Guard)
 - Approximately 3 design review meetings
 - Final Price Negotiation Meetings (minimum of two)

3.3 Construction Services Cost Proposal (CSCP)

The CMGC shall submit a Construction Services Cost Proposal (CSCP) when the plans and construction documents are completed to a level sufficient enough to do so. All costs associated with developing and negotiating the CSCP is included in the Pre-Construction Service Fee. The CSCP can include three possible payment methods areas; a Guaranteed Maximum Price (GMP), Adjustable Work, and possibly Contingency items.

The GMP contains all items that will be paid based on an agreed upon unit price. The quantity of the work items included in the GMP may increase or decrease as the project is built, however, there will not be an increase in price to the GMP unless there is a scope change that significantly changes the scope of work. The GMP will not be exceeded without approval from the MDOT Project Manager, and only by a written work order. All costs or expenses in excess of the GMP shall be borne by the CMGC, unless adjusted by a previously approved written work order.

Adjustable Work includes items of work that are paid based on an agreed upon unit price and actual quantities placed during construction. This work shall be used to mitigate significant risks that cannot be accurately quantified during the design.

Contingency items, if used, are used to compensate the contractor for items that cannot accurately be identified and quantified during the design phase.

The CMGC should expect several rounds of negotiations to arrive at an agreed upon Construction Services Cost Proposal. Negotiation meetings will primarily occur with staff from the CMGC, MDOT's Project Manager, MDOT Construction Engineer, and MDOT Innovative Contracting Unit Staff Engineer. Additional people, including the ICE, may be brought into the negotiations if it is agreeable by the CMGC and MDOT.

The CSCP shall include:

- Adjustable Work that may be paid based on an agreed upon unit price and actual quantities.
- Guaranteed Maximum Price (GMP) proposal, including all overhead and profit considered within specified pay items; as well as any subcontracted work. Description of all other inclusions to, or exclusions from, the GMP, including all assumptions and clarifications
- Possible contingency items.
- Lump Sum item costs (i.e.: mobilization, minor traffic devices, etc.) shall be detailed and include breakouts of what the costs include. These breakouts shall detail the costs for the prime and sub-contractors (i.e.: personnel established, expenses, bonding amounts, etc.)
- Construction schedule showing the proposed start and finished dates and any significant milestones.
- Contractor Quality Control Plan.
- Clarification of understanding of the EPA/DEQ requirements including adherence to the soil erosion and sedimentation control plan requirements.
- Disadvantaged Business Enterprise (DBE) participation description, if participation is required.

The CMGC shall make available all cost and budget estimates, including bid documents and bidding software files to MDOT.

The CMGC is expected to solicit at least three bids on work that will be subcontracted.

If the MDOT Project Manager and the CMGC cannot agree on a Construction Services Cost Proposal, MDOT reserves the right to terminate the CMGC services without penalty or payment, except payment for Pre-Construction Services, and to proceed with traditional design-bid-build or other non-traditional delivery methods. Any information provided by the CMGC during the Pre-Construction phase will be used to develop the plans and specifications for the letting. Additional information such as meeting minutes, correspondence and other submittals provided during the development phase may be provided to bidders if a price cannot be reached

3.4 Phase 2 – Construction Services

The CMGC shall, once the Construction Service Cost Proposal is approved:

- Construct, bid any remaining sub-contractor work, and manage all construction related contracts while meeting the DBE, if required, and other requirements.
- Execute the Quality Control Plan.
- Bond and insure the construction.
- Address and adhere to all federal, state, and local permitting and environmental requirements.
- Maintain a safe clean and well-organized work zone work site.
- Directly perform, with their own forces, the required percent of all construction work specified in Section 2, excluding any identified specialty items.
- Substantially complete the construction no later than March 31, 2023.

- In the event that the contract is terminated after the award of the construction phase to the CMGC, the termination procedures in the 2020 MDOT Standard Specifications for Construction shall be followed.

4 CONTENT OF STATEMENT OF QUALIFICATIONS

This section describes specific information that shall be included in the SOQ. SOQs shall follow the outline of this Section 4. Submitters shall provide brief and concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this RFQ. SOQs shall be submitted exclusively in the English language, inclusive of English units of measure and cost terms in United States of America dollar denominations.

4.1 Introduction (Pass/Fail)

The Submitter must complete and sign the Submitter Introduction Form (Attachment E). **The form certifies the truth and correctness of the contents of the SOQ.** This information will be used to define the Submitter team structure and composition, identify the Submitter and its designated contact, and will be reviewed on a pass/fail basis only and not as part of the qualitative assessment of the SOQ.

4.2 Understanding of Service (15 points)

The Submitter shall provide an understanding of the Project, Pre-Construction services, and construction services. Based on information available at the time of the RFQ, provide a synopsis demonstrating the Submitter's understanding of the physical description of the Project, probable impacts of the Project, potential issues and risks affecting the Project, and Submitter approach to delivering the Project and potential solutions to probable impacts and risks. Demonstrate an understanding of the Project goals discussed in Section 1.2 as the following areas are specifically addressed:

- A. Understanding of Project scope;
- B. Understanding of the construction and schedule requirements needed for the Project;
- C. Understanding of mobility and safety concerns for vehicles, pedestrians, and boat traffic;
- D. Understanding of impacts on the adjacent communities and traveling public;
- E. Understanding the potential risks associated with the Project and mitigation efforts that will be needed to remove or reduce the risk to meet the Project goals.
- F. Understanding movable bridge operations and the unique aspects of the structural, mechanical, and electrical components.
- G. Understanding the environmental concerns for the Project

Submitters should demonstrate an understanding of how the Project goals will be met through the CMGC process and include a brief narrative describing why they are the "best qualified" to perform the services outlined in this RFQ.

Submitters should describe their ability to provide pre-construction services and the advantages offered to MDOT and the Project from these services. Submitter should describe their ability to coordinate with MDOT to improve constructability and provide input on construction methods based on their team's expertise and experience. The submitter should also detail their approach for this coordination.

Submitters should describe their ability to perform the anticipated construction services for the Project along with their approach to Quality Assurance / Quality Control.

The Submitter should include sufficient information to familiarize reviewers with their project approach and their ability to satisfy the technical and construction requirements, review of quantities, development of cost estimates including the GMP, and address the public's concerns related to schedule and access. As part of the Understanding of Service, the Submitter should provide their approach to communications, outlining their understanding of how communications between the CMGC and MDOT will occur.

4.3 Qualifications of Team (20 points)

Provide the qualifications of the Submitter's team. The information should address the following:

- A. Management and staff experience, capabilities and functions on projects of comparable scope and with similar conditions.;
- B. The strength and depth of experience of the Key Personnel for the Project listed in Submitter's response;
- C. Effective project management structure and interaction with MDOT or other entities;
- D. Effective utilization of personnel and experience of team members working together;
- E. Experience on projects that successfully integrated construction and design activities.
- F. Experience rehabilitating bascule bridges, especially projects that involve replacement of track and treads or projects that involve temporary shoring;
- G. Experience with expedited schedules and timely completion on comparable projects;
- H. Experience with on-budget completion of comparable projects;
- I. Company experience and qualifications that are relevant to the Project scope;
- J. Qualifications and experience relating to successful Maintenance of Traffic operations on comparable corridor projects.

4.3.1 Organization of Project Team

A narrative describing the Submitter's teaming arrangements, its management structure and CMGC approach. The narrative should include, at a minimum, a discussion of the following:

- A. How the Submitter team organization will promote collaboration with the MDOT Project Team during Pre-Construction and Construction services.
- B. How the Submitter team will operate, in light of the complexity and sequencing of the Project;
- C. The experience of the team members working together on other comparable projects and the results of that experience; and
- D. How the management structure will facilitate the management of the Project risks.

Describe the roles of all Key Personnel, Major Participants and identified subcontractors for all phases of the project. It is expected that CMGC staff that will be active during construction are also active during the project's pre-construction phase. The entity meeting each of the construction prequalification classifications and subclassifications listed in section 2.4 must be identified. Include what percent of the named role that the entity is expected to provide.

Provide an organizational chart(s) for Pre-Construction and Construction services showing the flow of the "chain of command" with lines identifying participants who are responsible for major functions to be performed and their reporting relationships, in managing and building the Project. The chart(s) must show the functional structure of the organization down to the construction supervisor level and must identify Key Personnel by name. Identify the Submitter and all known Major Participants in the chart(s).

Submitters may be unable to identify all subcontractors who are providing Pre-Construction and Construction services. If a Submitter is unable to provide the name of the subcontractors, they should include a plan of how they will obtain the firm including what qualifications they would expect the firm to provide.

4.3.2 Project Team Communication

The Submitter shall demonstrate how communication will occur with internal staff, subcontractors, MDOT, MDOT's consultants, as well as their anticipated communication and involvement with the public. 4.3.3 Key Personnel

4.3.3.1 Resumes of Key Personnel

Resumes of Key Personnel shall be provided as Appendix A – Resumes of Key Personnel to the SOQ. Resumes of Key Personnel shall be limited to two pages each and will not be counted towards the overall SOQ page limit. If an individual fills more than one position, only one resume is required. The listing below describes the

minimum key personnel for the Project (“Key Personnel”), others may be added by the Submitter. Submitters may propose alternate plans to staff and manage the Project, which may be approved in MDOT’s sole discretion. SOQ’s with alternate staffing plans are required to have details of the key staff and their roles and responsibilities in a manner similar to the requirements listed below, including their responsibility on the Project and their authority over the operations.

Key Personnel

- A. Project Manager
- B. Project Supervisor
- C. Construction Quality Control Manager
- D. Cost Estimator

Include the following items on each resume:

- A. Relevant licensing and registration.
- B. Years of experience performing similar work.
- C. Actual work examples on similar projects, including projects, project dates, duties performed and their percentage of time on the project.

4.3.3.2 Minimum Qualifications of Key Personnel

Key Personnel will be evaluated, in part, based on the extent they meet and/or exceed minimum qualifications including, but not limited to, relevant education, training, certification, and experience. The following provides minimum qualifications of the Key Personnel assigned to the Project. Any certifications required to meet the requirements of the RFQ shall be in place by the time the first notice to proceed is issued. One person may be proposed in more than one Key Personnel position, unless otherwise noted.

A. Project Manager:

The Submitter’s Project Manager shall have a minimum of 10 years of recent experience managing the construction of highway construction projects with a similar scope of work, including experience integrating design and construction operations. The Submitter’s Project Manager will be responsible for the Pre-Construction Services, construction, quality management and contract administration for the Project and will:

- i. Have full responsibility for the prosecution of the Work,
- ii. Act as agent and be a single point of contact in all matters on behalf of Submitter,
- iii. Be available (or the Approved designee will be available) at all times that Work is performed, and
- iv. Have authority to bind Submitter on all matters relating to the Project.

B. Project Supervisor:

The Project Supervisor shall have a minimum of 10 years of recent experience managing field operations on highway construction projects of similar scope. The Project Supervisor must be on site during all construction activities (or the Approved designee must be on site). The Project Supervisor must work under the direct supervision of Submitter’s Project Manager. The Project Supervisor is responsible for ensuring that the Project is constructed in accordance with the Project requirements. The Project Supervisor is responsible for managing the CMGC construction personnel, scheduling of the construction activities, administering all construction requirements of the Contract, and coordinating with the Project Team during Pre-Construction services.

C. Construction Quality Control Manager:

The Construction Quality Control Manager is expected to have a minimum of 10 years of recent experience overseeing the inspection and materials testing on highway construction projects of similar scope.

It shall be the responsibility of the Construction Quality Control Manager to manage the Submitter’s construction Quality Control functions and will:

- i. Not be assigned any other duties or responsibilities on the Project.
- ii. Visit the site as necessary to validate construction quality, respond to any quality issues, and report on that visit to the MDOT Project Manager.
- iii. Shall be independent of direct scheduling or production activities and reports directly to the CMGC management team.
- iv. Be available whenever any construction activities are being performed.
- v. Have the authority to stop any and all work that does not meet the plans and specifications established for the Project.

D. Cost Estimator:

The Cost Estimator is preferred to have a minimum of 5 years of recent experience estimating costs on construction projects of similar scope. The Cost Estimator must be present at all project cost estimate review meetings and negotiations, at a minimum. The Cost Estimator must work under the direct supervision of Submitter's Project Manager. The Cost Estimator is responsible for ensuring that the milestone estimates and CSCP is developed in accordance with Project requirements and reflects discussion and correspondence with MDOT. The Cost Estimator is responsible for clearly communicating the basis of the estimate to MDOT, identifying missing or incomplete information needed for current or future estimates, and collaborating with the Project Team to reach a common understanding of Project costs.

SOQs shall include an express written statement from the Submitter committing that the Key Personnel designated in the SOQ for the positions or roles described in this Section 4 shall be available to serve the role so identified in connection with the Project.

4.4 Submitter Experience (20 points)

Describe at least two but a maximum of four projects the Submitter has completed or participated in (if the Submitter is not yet existing or is newly formed, please explain). For projects in which several of the proposed Major Participants were involved, the Submitter may provide a single project description. Highlight experience relevant to the Project the Submitter has gained in the last 5 years. Cite projects with levels of scope comparable to that anticipated for the Project. Also consider citing projects where construction duration is minimized, schedules were kept, and original construction budgets were not increased. Describe the experiences that could apply to this Project.

Each project description should include the following information:

- A. Name of the project and either the owner's contract number or state project number;
- B. Owner's project manager and their current telephone number;
- C. Dates of construction;
- D. Description of the work or services provided and percentage of the overall project actually performed;
- E. Description of scheduled completion deadlines and actual completion dates;
- F. Original construction budget and final construction cost.

MDOT may elect to use the information provided above as a reference check.

The Submitter should demonstrate how they completed the projects with success in the areas of schedule, bascule bridge rehabilitation, quality, cost and maintenance of traffic, including their role in the success of the projects. A focus on the bascule bridges and past experience with these shall be incorporated into this section.

Describe what work is intended to be self-performed and what items will be bid to prequalified sub-contractors.

4.5 Work Zone Safety (15 points)

The Submitter shall discuss and describe how work zone accidents can be minimized or mitigated. The Submitter should also provide information related to potential areas for contractor staging areas/yards and the access to and from the project.

4.6 Schedule Management (15 points)

The Submitter shall provide information that will demonstrate how they could reduce and/or improve the overall construction schedule. MDOT's desire is to expedite the construction schedule while minimizing impacts to the traveling public while completing the work in an effective manner. Scoring will be greatest to those Submitters who provide a clear understanding and provide information on how they expect to meet these goals and demonstrate how their input during the design will be beneficial to MDOT's schedule goals.8.3.6

4.7 Innovations (15 points)

The Submitter shall list any potential innovations and innovative approaches to completing the project. At a minimum, innovations should specifically address how the Submitter expects to provide input into the design to improve the project and what can be done to expedite the schedule and limit impacts to traffic.

4.8 Legal and Financial (Pass/Fail)

The information required in response to this Section 4.8 shall be submitted as Appendix B – Legal and Financial. Information provided in response to these sections will not count towards the overall page limitation defined in Section 6.2. Information required by this section will be evaluated on a pass/fail basis.

4.8.1 Organizational Conflicts of Interest

Identify all relevant facts relating to past, present or planned interest(s) of the Submitter's team (including the Submitter, Major Participants, proposed consultants, contractors and subcontractors, and their respective chief executives, directors and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFQ.

Disclose: (a) any current contractual relationships with MDOT (by identifying the MDOT contract number and project manager) that may result in, or could be viewed as a potential conflict of interest on this Project; (b) present or planned contractual or employment relationships with any current MDOT employee; and (c) any other circumstances that might be considered to create a financial interest in the contract for the Project by any current MDOT employee if the Submitter is awarded the contract. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

For any fact, relationship or circumstance disclosed in response to this Section 4.8.1 identify steps that have been or will be taken to avoid, neutralize or mitigate any organizational conflicts of interest.

The required information for Organizational Conflicts of Interest shall be submitted using the Conflict of Interest Statement in Attachment C.

4.8.2 Legal Structure

If the Submitter organization has already been formed but does not currently have paperwork on file with MDOT, provide complete copies of the organizational documents that allow, or would allow by the time of contract award, the Submitter and Major Participants to conduct business in the State of Michigan. MDOT will verify the legal structure of Submitters with paperwork currently on file with MDOT. If the Submitter organization has not yet been formed, provide a brief description of the proposed legal structure or draft copies of the underlying agreements.

4.8.3 Financial Viability

The Submitter shall supply form 1300 EZ with their SOQ, if one is not currently on file with. Submitters do not need to provide MDOT Form 1381. MDOT will verify the financial viability of Submitters who have a current 1300EZ form on file with MDOT.

5 EVALUATION PROCESS

5.1 SOQ Evaluation

MDOT will initially review the SOQs for responsiveness to the requirements of this RFQ. The information in the SOQ will then be measured against the evaluation criteria described in Section 4. Submitter's SOQ response shall be complete based on the RFQ requirements. A non-responsive or partially non-responsive SOQ missing required information may result in a "fail".

5.2 SOQ Scoring

MDOT will evaluate all responsive SOQs and measure each Submitter's response against the Project goals and evaluation criteria set forth in this RFQ, resulting in a numerical score for each SOQ. The scoring will be distributed as described in Section 4 and summarized below:

- A. Understanding of Service (15 Points)
- B. Qualifications of Team (20 Points)
- C. Submitter Experience (20 Points)
- D. Work Zone Safety (15 Points)
- E. Schedule Management (15 Points)
- F. Innovations (15 Points)

5.3 Interviews

An interview may be required if the scoring of the SOQs is inadequate to clearly identify the most qualified Submitter. The interview will allow the Submitter the opportunity to present on the qualifications of their team, project approach or on other areas they feel will add value. MDOT will have the opportunity to ask Submitters general questions or questions that are specific to their SOQ. Interviews will be at the sole discretion of MDOT. If interviews are required, MDOT will notify no more than the three most qualified firms to set up an interview. MDOT may provide firms questions to be addressed at the interview. Interviews are limited to 60 minutes. If an interview is conducted the selection will be based on the Submitter with the highest combined total score (130 possible points).

5.4 Determining Selected Submitter

MDOT will total the scores for each responsive SOQ and prepare a ranked list of Submitters. <Selection will be based on the Submitter with the highest total combined score (100 possible points) if MDOT does not require an interview. If an interview is conducted the selection will be based on the Submitter with the highest combined total score (130 possible points).>

MDOT reserves the right, in its sole discretion, to cancel this RFQ, issue a new RFQ, reject any or all SOQs, seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ, seek and receive clarifications to an SOQ and waive any deficiencies, irregularities or technicalities in considering and evaluating the SOQs.

This RFQ does not commit MDOT to enter into a contract or proceed with the procurement of the Project. MDOT assumes no obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred by the parties responding to this RFQ. All such costs shall be borne solely by each Submitter.

5.5 Notification of Selection

The selected team will have their Submitter's name and score posted on MDOT's innovative contracting website, which will serve as the selection announcement. Teams that are not selected will only have their scores posted; however, each Submitter will receive their individual score sheet from MDOT via e-mail within five working days of the scores and selection results being posted. See Attachment D for an example of the selection announcement.

5.6 Debriefing

Feedback may be provided via face to face meeting, phone or email at the discretion of the Project Manager however, it will not be provided until after the award of the contract.

6 SOQ SUBMITTAL REQUIREMENTS

The following section describes requirements that all Submitters shall satisfy in submitting SOQs. Failure of any Submitter to submit their SOQ as required in this RFQ may result in rejection of its SOQ.

6.1 Due Date, Time and Location

SOQs are due on the date and time listed in Section 2.2. Any SOQ that fails to meet the deadline or delivery requirement will be rejected without opening, consideration or evaluation.

SOQs shall be delivered via email to the MDOT Innovative Contracting Project Manager identified in Section 2.3 and copied to the MDOT Project Manager shown below. The SOQs shall have the subject line of **“SOQ North Region – US-31 CMGC”**. MDOT will not accept SOQs by facsimile, or any other means of delivery.

MDOT Project Manager:

Talia Belill, P.E. – MDOT Project Manager

E-mail: belillt@michigan.gov

6.2 Format

All SOQ's shall comply with the following:

- A. Provide a Portable Document File (PDF) that is bookmarked. The maximum file size allowable for emailing is 14 megabytes (MB). The subject of the email shall be **“SOQ North Region – US-31 CMGC”**.
- B. The SOQ shall not exceed 10 single-sided pages. The 10 page limit does not include key personnel resumes (Appendix A – Resumes of Key Personnel), submitter introduction (Appendix E – Submitter Introduction Form), and the required legal information (Appendix B – Legal and Financial) defined in Section 3.6. In the 1300EZ form, the references to “Bidder” shall mean “Submitter”.
- C. Pages shall be 8 ½ inches by 11 inches.
- D. Font must be a minimum of 12 point.
- E. All pages must be numbered continuously throughout and in the format of “Page 1 of _”, including resumes and legal understanding.
- F. Graphics are allowed within established page limits. Text used on graphics shall be legible and shall be used to describe the contents of the graphic. Any additional narrative text that does not directly relate to a graphic may be excluded from MDOT consideration at MDOT's sole discretion.

6.3 Ownership of SOQs

SOQ's and any other information submitted by the Submitter's shall become the property of MDOT. All or any part of the proposed Submitter innovation or method may be used or disclosed on this or future projects without obligation or compensation to the Submitter.

6.4 Validity Period

SOQ's are to be valid for MDOT's acceptance for a minimum of 49 days after the Statement of Qualification Due Date to allow time for evaluation and selection. A SOQ, if accepted, shall remain valid for the duration of the Contract.

7 PRE-CONSTRUCTION SERVICES FEE AND TERMINATION

7.1 Pre-Construction Fee

The selected Submitter will be notified after the SOQ(s) have been reviewed and scored. The selected Submitter will be required to attend a scope verification meeting at a location determined by the MDOT PM and then submit a Pre-Construction Services Fee. This fee should include all direct costs, overhead and profit required to complete the scope of work outlined in Section 3.2. The Submitter should include a work plan and a description of their intended level of effort to review and assist in the development of plans and specifications during the preconstruction phase.

The Pre-Construction Services Fee shall be developed using the current MDOT Priced Proposal Documents and Vendor/Consultant Payments information (travel rates, vehicle expenses, etc.) available at [MDOT - Vendor/Consultant Services \(michigan.gov\)](https://www.michigan.gov/MDOT).

Pre-Construction costs must be supported by a derivation of cost and back-up documentation. In general, two methods of documentation for the derivation of cost and back-up information are acceptable:

- A. Hourly rates with an audited overhead rate, direct expenses, and fixed fee:
 - a. The rates for each individual employee or classification included in the priced proposal must be submitted separately in a letter, certified by the company's financial officer.
 - b. Use an audited overhead rate. Provide audit report for the company's Indirect Cost Rate Schedule for the most recent fiscal year to confirm the audited rate. If the audited overhead rate has been accepted by a state Department of Transportation other than MDOT, include the acceptance letter and the corresponding audit report for the company's indirect cost rate schedule for the most recent fiscal year.
 - c. A The fixed fee for profit allowed for this project is 11.0% or less of the cost of direct labor and overhead.
- B. Loaded hourly rates and direct expenses:
 - a. The loaded hourly rates will include costs for overhead and profit and must be supported by invoices to other clients.
 - b. The invoices must be for similar Pre-Construction services that have been provided to other clients.
 - c. The rates submitted to MDOT for each employee or classification must be supported by a minimum of three invoices.
 - d. The rates submitted to MDOT for each employee or classification must not be higher than the corresponding rate on any of the three supporting invoices.
 - e. The invoices must be stamped "approved" by the client, or other documentation must be provided to verify that the client paid the invoices.

MDOT reserves the right to negotiate the cost of the Pre-Construction Services Fee. If MDOT and the selected CMGC cannot agree on a price, hours of effort or number of employees providing these pre-construction services, MDOT will begin negotiations with the next highest-ranking Submitter from the SOQ scoring process.

Pre-Construction costs must comply with the Federal cost principles to be eligible for participation. In compliance with 23 CFR Section 635.507, if a CMGC provides an indirect cost rate, it must be in accordance with the Federal cost principles (as specified in 2 CFR part 200 subpart E) and a letter from an executive or financial officer of the company certifying it was prepared accordingly. Per 23 CFR Section 635.507, the certification of final indirect costs will read as follows:

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles in 2 CFR part 200 subpart E; and

-
2. This proposal does not include any cost which are expressly unallowable under application cost principles of 2 CFR part 200 subpart E.

Compensation for this project shall be on a milestone basis. Compensation shall be divided into payments for the completion of a portion of the services (deliverables) as follows:

- Pre-Final Plan Comments 33%
- Pre-Final Plan Estimate 33%
- Construction Services Cost Proposal 34%
- Total Service 100%

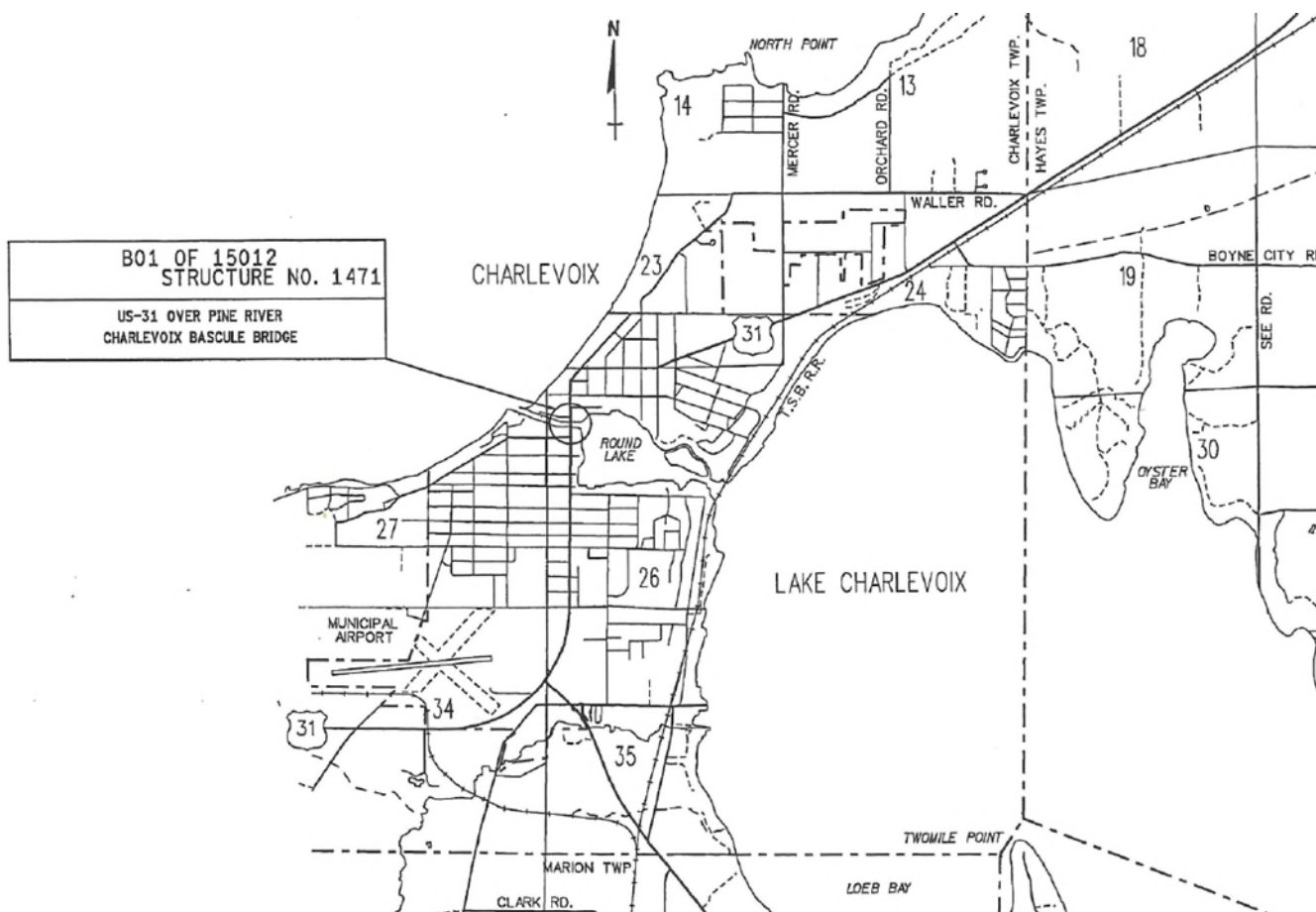
The MDOT Project Manager may authorize payment if a milestone is delayed due to circumstances beyond the CMGC's control.

All billings for services must be directed to the Department and follow the current guidelines.

Payment to the CMGC for services rendered shall not exceed the maximum lump sum amount unless an increase is approved in accordance with the contract with the CMGC.

7.2 Termination of Pre-Construction Services

MDOT may terminate the contract with the CMGC if pre-construction services and coordination are not provided as negotiated and/or expected, or for convenience. A written 15 day notice will be sent to the CMGC before the services are completed. If the contract is terminated for any reason during the pre-construction phase, MDOT will determine if partial compensation for services rendered shall be paid to the CMGC.

Attachment A Location Map

Attachment B Preliminary Reference Information Documents**INDEX OF REFERENCE INFORMATION DOCUMENTS**

These documents are provided on MDOT ProjectWise. Access can be obtained by contacting Clint Mayoral, MDOT Innovative Contracting Project Manager at mayoralc@michigan.gov. When requesting access, also carbon copy (cc) Talia Belill, MDOT Project Manager at belillt@michigan.gov.

RID AS-BUILTS	
(Descriptions of as-builts are provided for information only and may not be entirely accurate)	
15012-B01 09344.pdf – 1991 Resurfacing plans	
15012-B01 30966.pdf – 1992 Bridge Rehabilitation plans	
15012-B01 34058.pdf -1995 Bridge Rehabilitation and Electrical/Mechanical plans	
15012-B01 122566.pdf – 2016 Bridge Rehabilitation and Electrical/Mechanical plans	
15012-B01 205007.pdf – 2019 Bridge Rehabilitation and Electrical System plans	
RID MISCELLANEOUS REFERENCE	
<u>Structures</u>	
15012-B01 RFA.pdf – Request for Action by MDOT Bridge Inspection	
15012 - B01 Draft Track and Tread Report.pdf – Summary of Track and Tread Inspection Findings	

Attachment C Conflict of Interest Disclosure

_____ (Prime Contractor Name) certifies that it has read and understands the following:

The PRIME CONTRACTOR, its team members, and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the Project, that would conflict or appear to conflict in any manner with the performance of the services under this Contract. "Affiliate" means a corporate entity connected to the PRIME CONTRACTOR through common ownership. "Team member" means any known entity the PRIME CONTRACTOR intends to be in a contractual relationship with to complete the work associated with the Project. The PRIME CONTRACTOR, its team members, and its Affiliates agree not to provide any services to any entity that may have an adversarial interest in the Project, for which it has provided services to the DEPARTMENT. The PRIME CONTRACTOR, its team members, and its Affiliates agree to disclose to the DEPARTMENT all other interests that the PRIME CONTRACTOR, its team members, or sub consultants have or contemplate having during each phase of the Project. The phases of the Project include, but are not limited to, planning, scoping, early preliminary engineering, and construction. In all situations, the DEPARTMENT will decide if a conflict of interest exists. If the PRIME CONTRACTOR, its team members, and its Affiliates choose to retain the interest constituting the conflict, the DEPARTMENT may terminate the Contract for cause in accordance with the provisions stated in the Contract.

- ☐ Certification for Subject Project: Based on the foregoing, the PRIME CONTRACTOR certifies that no conflict exists with the subject Project for it, or any of its team members and/or Affiliates
- ☐ Disclose of Conflict with Subject Project: Based on the foregoing, the PRIME CONTRACTOR certifies that a potential conflict does or may exist with the subject Project for it, and/or any of its team members and/or Affiliates. The attached sheets describe the potential conflict

This form, and any attachments, must be certified by a person from the PRIME CONTRACTOR who has contracting authority.

Certified by: Printed Name: _____
 Signature: _____
 Title: _____
 Company Name: _____
 Date: _____

Attachment D Example Notice of Selection Results

(DATE OF POSTING)

US-31 Bascule Bridge, Charlevoix Country Construction Manager/General Contractor (CMGC) Project
MDOT Job No. 214317

The following team has been selected for the US-31 Bascule Bridge, Charlevoix Country CMGC Project:

Selected Team Name	Cumulative Score (100 Pts. Max.)	<u>Criterion #1</u> Understanding of Service (15 Pts. Max.)	<u>Criterion #2</u> Qualifications of Team (20 Pts. Max.)	<u>Criterion #3</u> Submitter Experience (20 Pts. Max.)	<u>Criterion #4</u> Work Zone Safety (15 Pts. Max.)	<u>Criterion #5</u> Schedule Management (15 Pts. Max.)	<u>Criterion #6</u> Innovations (15 Pts. Max.)
Company 1							
Non-Selected Scores (Names are not provided)	Cumulative Score (100 Pts. Max.)	<u>Criterion #1</u> Understanding of Service (15 Pts. Max.)	<u>Criterion #2</u> Qualifications of Team (20 Pts. Max.)	<u>Criterion #3</u> Submitter Experience (20 Pts. Max.)	<u>Criterion #4</u> Work Zone Safety (15 Pts. Max.)	<u>Criterion #5</u> Schedule Management (15 Pts. Max.)	<u>Criterion #6</u> Innovations (15 Pts. Max.)
*							
*							
*							
*							

*Names are not provided - Intentionally left blank

Attachment E Submitter Introduction Form

Submitter Organization Information: *If the Submitter is a joint venture, include information from each member of the joint venture.*

Business Name:	
Business Address:	
Business Type: (corporation, partnership, joint venture, etc.)	

Submitter's Point of Contact: *This person will be the single point of contact on behalf of the Submitter organization, responsible for correspondence to and from the organization to MDOT. MDOT will send all Project-related communications to this contact person.*

Name:	
Address:	
Telephone number:	
E-mail Address:	

Major Participants:

Major Participant Name/Contact	Address of Head Office	Description of Role/Prequalification

Acknowledgement of RFQ Addenda: *Identify and acknowledge all RFQ addenda provided by number and date.*

Addenda Number:	Addenda Date:	Acknowledgement: (check box)
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Signatures:

This form is required to be signed by authorized representatives of the Submitter organization. If the Submitter is a joint venture, the joint venture members shall sign the form. If the Submitter is not yet a legal entity, the known Major Participants shall sign the form.

By signing below, the Submitter certifies the truth and correctness of the contents of the SOQ, including this Submitter Introduction Form.

Printed Name:	Signature:	Date:	Organization/Role:

Attachment F Sample Pre-Construction Services Contract

CONTRACT NO. «CONTRNO»
CONTROL SECTION: «CONTSECTION»
JOB NO. «JOB»
FED. PROJ. NO. «FEDPNO»
ITEM NO. «ITEM»
AGENDA: «AGENDA»

MICHIGAN DEPARTMENT OF TRANSPORTATION

«VENDOR»

CONTRACT

This Contract is made and entered into this date of _____ by and between the Michigan Department of Transportation (MDOT) and «VENDOR» (CONTRACTOR), of «ADDRESS», for the purpose of MDOT engaging the CONTRACTOR to provide professional Construction Manager/General Contracting services for «PROJECTDESC».

Recitals:

The PROJECT TEAM, as referenced herein, is composed of MDOT, the Design Consultant, the Independent Cost Estimator, the CONTRACTOR, the CONTRACTOR's subcontractors, the U.S. Coast Guard, and any additional project stakeholders; and

After the Phase 1 design plans are sufficiently developed (approximately 70 percent to 90 percent complete), the CONTRACTOR will prepare and submit to MDOT a Construction Services Cost Proposal that includes a Guaranteed Maximum Price (GMP) to complete the construction phase of the project; and

Phase 2 (construction) of the project will commence only if the parties successfully negotiate an acceptable Construction Services Cost Proposal, including the GMP, and enter into a separate construction contract for such Phase 2 construction services; in the event that the parties cannot agree upon an acceptable Construction Services Cost Proposal, including the GMP, MDOT reserves the right to proceed with the project utilizing other delivery methods; and

The services may be programmed with the use of federal funds administered by the United States Department of Transportation, Federal Highway Administration (FHWA).

The parties agree that:

THE CONTRACTOR WILL:

1. Perform the preconstruction work (Phase 1) set forth in Exhibit A, dated «EXDATE», pages 1 through «EXPGS», attached hereto and made a part hereof (SERVICES).

The CONTRACTOR will prepare and submit to MDOT a Construction Services Cost Proposal that includes a GMP. The Phase 2 (construction) of the project will commence only if the parties successfully negotiate an acceptable Construction Services Cost Proposal, including the GMP, and enter into a separate construction contract for such Phase 2 construction services. In the event the parties cannot agree upon a Construction Services Cost Proposal, including the GMP, MDOT reserves the right to terminate the Construction Manager/General Contractor services and proceed with the project utilizing other delivery methods.

2. Perform all SERVICES in conformity with MDOT's applicable standards and guidelines.
3. During the performance of the SERVICES herein defined, be responsible for any loss of or damage to original documents belonging to MDOT while they are in the CONTRACTOR's possession. Restoration of lost or damaged original documents will be at the CONTRACTOR's expense.
4. Make such trips to confer with representatives of MDOT and the United States Department of Transportation, Federal Highway Administration (FHWA), as may be necessary in the carrying out of the SERVICES set forth in this Contract.
5. Submit written progress reports to MDOT that outline the work accomplished during the reporting period; identify any problems, real or anticipated, associated with the conduct of the SERVICES; and identify any deviations from the agreed upon work plan.
6. Prepare the graphics and text for all reports in a form suitable and acceptable to MDOT, such suitability and acceptability to be determined by MDOT. This section is limited to the format of the graphics and text. Nothing herein is to be construed as allowing MDOT to declare as unsuitable or unacceptable any of the graphics or text because of the conclusions arrived at by the CONTRACTOR through analysis of data collected for this project.

As used throughout this Contract, the words "satisfactory" and "acceptance" are defined to mean that the product is in the format required and is completely in accordance with the Contract requirements; however, it does not mean that the conclusions arrived at for this project must be approved or agreed to by MDOT or the FHWA.

7. Prepare and submit to MDOT a written preliminary copy of the Final Project Report in accordance with the work plan set forth in Exhibit A for its review and acceptance prior to submission of the Final Project Report. MDOT will notify the CONTRACTOR of its acceptance or rejection of the Final Project Report within sixty (60) days of receipt of same from the CONTRACTOR.
8. Submit any proposed publication by the CONTRACTOR or its subcontractors of the results of project work for prior review and acceptance by MDOT. Such review and acceptance is for MDOT's own purposes and does not relieve the CONTRACTOR of any of its obligations and responsibilities for any claims arising out of such publication. Any such publication will include proper credit for all parties to this Contract.
9. Permit representatives of MDOT, the FHWA, and other authorized public agencies interested in the SERVICES to have full access to the SERVICES during the CONTRACTOR's performance.
10. With regard to audits and record-keeping:
 - a. The CONTRACTOR will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract (RECORDS). Separate accounts will be established and maintained by job number for all costs incurred under this Contract.
 - b. The CONTRACTOR will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONTRACTOR will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. MDOT or its representative may inspect, copy, scan, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the CONTRACTOR will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
11. The CONTRACTOR will provide feedback regarding the design in accordance with the following:
 - a. The CONTRACTOR will not be expected to be the designer of record for the project, but is be expected to provide the PROJECT TEAM with construction expertise and technical experience to assist in project decision-making, ensure the technical challenges are addressed, and provide input on items affecting

construction costs, schedule, constructability and market conditions.

- b. The CONTRACTOR is not required to ascertain that the design plans and specifications reviewed during its performance of the SERVICES are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The CONTRACTOR shall promptly report to MDOT any nonconformity discovered by or made known to the CONTRACTOR as a request for information in such form as MDOT may require. The CONTRACTOR is required to develop the GMP based on work that will be performed in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
 - c. The recommendations and advice of the CONTRACTOR concerning the design alternatives shall be subject to the review and approval of MDOT.
 - d. The CONTRACTOR will exercise reasonable care in preparing schedules and estimates. The CONTRACTOR, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.
12. The CONTRACTOR will provide insurance in the amounts and types set forth below, at a minimum, for the life of the Contract. The CONTRACTOR will submit certificates of insurance to MDOT before the award of the Contract, as requested by MDOT. The insurer must provide at least thirty (30) days written notice of cancellation or change to MDOT. The CONTRACTOR is responsible for verifying that its subcontractors are in compliance with MDOT's insurance requirements.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Consultants must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

13. If MDOT discloses its confidential information to the CONTRACTOR, the CONTRACTOR will maintain such information as confidential. Information provided by MDOT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
 - a. Information for which MDOT gives prior written permission for publication or use.
 - b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of this Contract, and MDOT may terminate this Contract under the provisions of Section 24(b).

News releases pertaining to this Contract or the SERVICES to which it relates will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. News releases made without MDOT's approval will be considered a breach of the Contract, and MDOT may terminate this Contract under the provisions of Section 24(b).

14. Submit billings to MDOT for the SERVICES performed in accordance with the following:
 - a. Billings for SERVICES will be on a milestone basis and will be made in accordance with the milestone schedule set forth in Exhibit A. Each billing for milestone payment will only occur upon acceptance of all work detailed in the milestone schedule for the specific milestone.
 - b. Notwithstanding any other provision in this Contract to the contrary, the CONTRACTOR's milestone payment applications will be supported solely by proof of acknowledgement by MDOT that a particular milestone was accepted. Proof of actual costs incurred will not be required of the CONTRACTOR in support of any pay application under Section 14 or notice of audit under Section 22 as the milestones in Exhibit A have been agreed upon as lump sum compensation milestones.
 - c. The CONTRACTOR agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CONTRACTOR also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
 - d. The final billing for the SERVICES must be received within sixty (60) days of completion of the SERVICES. MDOT may close the Contract after the sixty (60) days have passed. Costs provided to MDOT after this sixty (60) day period may be denied by MDOT.

- e. All billings for SERVICES provided prior to September 30 of any year must be received by MDOT in accordance with MDOT's annual fiscal year end instructions or a significant delay in payment may occur.

MDOT WILL:

- 15. Provide the CONTRACTOR with access to MDOT standards and information in its possession and related to the SERVICES that the CONTRACTOR specifically requests, except for such standards and information as the CONTRACTOR is specifically required to provide.
- 16. Pay the CONTRACTOR for the SERVICES after receipt of billings and in accordance with the provisions of Section 17 below, subject to verification of progress. Compensation for the SERVICES will be on a milestone basis, with lump sum payments to be made upon the accomplishment of defined milestones, as set forth in Exhibit A, and will not exceed «MAXAMT», as set forth in Exhibit A. The CONTRACTOR will be responsible for all costs in excess of MDOT and FHWA funds shown above.

MDOT funds in this Contract made available through legislative appropriations are based on projected revenue estimates. MDOT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.

- 17. Determine that payment for the costs of the SERVICES required and performed is in accordance with the following:
 - a. Milestone payments will be made upon acceptance of all work detailed in the milestone descriptions set forth in Exhibit A.
 - b. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
- 18. Make payment to the CONTRACTOR after receipt of a billing, in accordance with the following:
 - a. Within thirty (30) days of receipt of the billing from the CONTRACTOR, MDOT will either approve the billing for payment or, in lieu of such approval, will inform the CONTRACTOR that such approval has not been given. Additionally, MDOT will inform the CONTRACTOR why the billing has not been approved and the actions, if any, required of the CONTRACTOR to obtain such approval. Upon approval by the Project Manager, the billing will be submitted for payment. This subsequent payment process requires up to an additional thirty (30) days.

- b. In the event MDOT determines that the CONTRACTOR is not currently eligible to receive any or all of the funds requested, it will promptly notify the CONTRACTOR, stating the reason for such determination.
- c. Upon receipt by MDOT of the required documents and any other accompanying information in a form satisfactory to MDOT, MDOT will process the payment request if the CONTRACTOR is complying with its obligations pursuant to the Contract. Reimbursement of any costs pursuant to this section will not constitute a final determination by MDOT of the allowability of such costs and will not constitute a waiver by MDOT of any violation of the terms of this Contract committed by the CONTRACTOR.
- d. Regardless of its costs, the CONTRACTOR will not be entitled to compensation in excess of the maximum amount(s) set forth in Section 16 hereof.
- e. The CONTRACTOR will not be paid for costs arising from the correction of errors and omissions attributable to the CONTRACTOR.

IT IS FURTHER AGREED THAT:

- 19. The parties will consider the SERVICES to be complete when accepted by MDOT. Such acceptance by MDOT is not intended to nor does it relieve the CONTRACTOR of any of its obligations and responsibilities herein.
- 20. Any change in the scope, character, or term of this Contract or in the maximum amount as shown in Section 16 of this Contract will only be by award of a prior written amendment to this Contract by the parties.
- 21. When delays are caused by circumstances or conditions beyond the control of the CONTRACTOR, as determined by MDOT, the CONTRACTOR may be granted an extension of time, as set forth in Section 47. Such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
- 22. In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the CONTRACTOR a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CONTRACTOR at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CONTRACTOR will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any

disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CONTRACTOR may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract. The CONTRACTOR agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the CONTRACTOR, the CONTRACTOR will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the CONTRACTOR fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the CONTRACTOR agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the CONTRACTOR under this Contract or any other agreement or payable to the CONTRACTOR under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CONTRACTOR expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the CONTRACTOR in a timely filed RESPONSE.

23. MDOT and the CONTRACTOR will agree on the Key People to be assigned to the Project Team prior to any work being performed. The CONTRACTOR will not replace any Key People assigned to the Project Team without prior written approval from MDOT. MDOT has the right to disapprove proposed replacements, and the CONTRACTOR is required to find alternative replacements that are acceptable to MDOT. The replacement of Key People from the Project Team without MDOT's prior written approval will be considered a breach of the Contract, and MDOT may terminate this Contract under the termination provisions of Section 24(b). If a member of the Project Team who is one of the Key People leaves the Project Team, the CONTRACTOR will replace that person with a person who is acceptable to MDOT in accordance with the MDOT "Consultant Loss of Key Staff Notification Process," dated February 9, 2015. Failure by the CONTRACTOR to find an

acceptable replacement to the Project Team will be considered a breach of this Contract, and MDOT may terminate this Contract under the termination provisions of Section 24(b). “Key People” are defined as those people whose qualifications and experience are essential to providing quality SERVICES. “Project Team” means the personnel assigned by the CONTRACTOR and the subcontractor(s) who are responsible for the completion of the SERVICES.

24. MDOT may terminate this Contract for convenience or cause, as set forth below, before the SERVICES are completed. Written notice of termination will be sent to the CONTRACTOR. The CONTRACTOR will be reimbursed in accordance with the following:

- a. **Termination for Convenience:**

If MDOT terminates this Contract for convenience, the CONTRACTOR will be reimbursed for all milestones achieved for which MDOT receives the completed work product. MDOT will pay the CONTRACTOR a proportionate share for the partially completed work product of a partially completed milestone. The value of such partially completed work product will be determined by MDOT based on the actual costs incurred. In no case will the compensation paid to the CONTRACTOR for partial completion of SERVICES exceed the amount the CONTRACTOR would have received had the SERVICES been completed.

- b. **Termination for Cause:**

In the event the CONTRACTOR fails to complete any of the SERVICES in a manner satisfactory to MDOT, and/or discloses MDOT’s confidential information, in violation of the provisions of Section 13, and/or replaces any Key People without prior written approval from MDOT, as set forth in Section 23, and/or fails to find an acceptable replacement to the Project Team, as set forth in Section 23, and/or makes any public relations communications and/or products that are intended for an external audience without prior written approval from MDOT, as set forth in Section 45, MDOT may terminate this Contract for cause. Written notice of termination will be sent to the CONTRACTOR. The CONTRACTOR will be reimbursed as follows:

The CONTRACTOR will be reimbursed for all milestone achieved for which MDOT receives the completed work product. MDOT will not reimburse the CONTRACTOR for any partially completed milestone(s).

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the CONTRACTOR, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CONTRACTOR under this Contract,

as well as any other existing or future contracts between the CONTRACTOR and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CONTRACTOR. In the event of termination of this Contract, MDOT may procure the professional SERVICES from other sources and hold the CONTRACTOR responsible for any damages or excess costs occasioned thereby.

25. All documents prepared by the CONTRACTOR under this Contract are the property of MDOT and cannot be furnished to any party without the permission of MDOT, except to the involved governmental agencies and commissions as part of the progress reporting process and except as provided in and limited in Section 34 herein.
26. This Contract is personal to the parties and cannot be assigned. The CONTRACTOR will not sublet any portion of the SERVICES without MDOT's approval of the CONTRACTOR's Intent to Subcontract form, and subcontractor work may not begin until the subcontract is signed or, in specific situations, a Limited Notice to Proceed form is signed. The CONTRACTOR will not sublet more than sixty percent (60%) of the SERVICES by dollar amount.

Such approval of any Intent to Subcontract form is given solely for the purposes of MDOT. Approval does not constitute an assumption of liability, a waiver, or an estoppel to enforce any of the requirements of this Contract, nor will any such approval by MDOT be construed as a warranty of the third party's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity. The Intent to Subcontract form does not replace the traditional subcontract or subcontract amendment between the CONTRACTOR and its subcontractor. MDOT or its representative may inspect, copy, scan, or audit the traditional subcontract records at any reasonable time after giving reasonable notice.

Any subconsultant will not sublet more than fifty percent (50%) of its subcontracted SERVICES by dollar amount. This provision will be included in all subcontracts relating to this Contract.

The following named subcontractor(s), as set forth in Exhibit A, will perform portions of the SERVICES:

«SUBS»

27. The CONTRACTOR agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the CONTRACTOR receives from MDOT. This requirement is also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The CONTRACTOR further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

28. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and the satisfactory and acceptable fulfillment of the terms of this Contract will be decided by MDOT.
29. With regard to non-discrimination and DBE requirements:
 - a. In connection with the performance of SERVICES under this Contract, the CONTRACTOR (hereinafter in Appendix A referred to as the “contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
 - b. During the performance of this Contract, the CONTRACTOR, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the “contractor”) agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
 - c. The CONTRACTOR will carry out the applicable requirements of MDOT’s DBE program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof.
30. Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). The UNIVERSITY is required to register to receive payments by EFT at SIGMA Vendor Self Service (VSS) website (www.michigan.gov/SIGMAVSS).
31. The CONTRACTOR specifically agrees that in the performance of the SERVICES herein enumerated, by itself, or by an approved subcontractor, or by anyone acting on its behalf,

it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of this Contract.

32. The CONTRACTOR warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, MDOT will have the right to annul this Contract without liability or, at its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
33. If MDOT does not wish to subscribe to the findings or conclusions of the SERVICES, the following statement will be added to the credit line of all reports published by the CONTRACTOR or by MDOT:

“The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Michigan State Transportation Commission or the Michigan Department of Transportation or the Federal Highway Administration.”
34. It is agreed that the CONTRACTOR will not copyright any papers, reports, forms, or other materials that are part of its work under this Contract without the prior written approval of MDOT.
35. In addition to the protection afforded by any policy of insurance, the CONTRACTOR agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and all officers, agents, and employees thereof:
 - a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the CONTRACTOR in connection with the CONTRACTOR’s performance of the SERVICES; and
 - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, and response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the CONTRACTOR’s performance of the SERVICES under this Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

MDOT will not be subject to any obligations or liabilities by contractors of the CONTRACTOR or their subcontractors or any other person not a party to this Contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CONTRACTOR will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan State Transportation Commission, MDOT, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of this Contract, thereby giving the State of Michigan, the Michigan State Transportation Commission, MDOT, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

36. In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the CONTRACTOR, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void this Contract if the name of the CONTRACTOR or the name of a subcontractor, manufacturer, or supplier utilized by the CONTRACTOR in the performance of this Contract subsequently appears in the register during the performance of this Contract.
37. The CONTRACTOR's signature on this Contract constitutes the CONTRACTOR's certification that to the best of his or her knowledge and belief no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

The CONTRACTOR will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

38. The CONTRACTOR's signature on this Contract constitutes the CONTRACTOR's certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

The certification that is included as a part of this Contract as Attachment A is Appendix A of 49 CFR Part 29 and applies to the CONTRACTOR (referred to in Appendix A as "the prospective primary participant").

The CONTRACTOR is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the CONTRACTOR enters into written arrangements for the procurement of goods and services provided for in this Contract.

39. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
- a. The CONTRACTOR stipulates that any facility to be utilized in the performance of this Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of Contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
 - b. The CONTRACTOR agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the CONTRACTOR and the SERVICES under this Contract.

- c. The CONTRACTOR will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The CONTRACTOR agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
40. The CONTRACTOR agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Contract.
41. The CONTRACTOR agrees that it will not volunteer, offer, or sell its services to any litigant against MDOT with respect to any SERVICES it has agreed to perform for MDOT under this Contract, provided that this provision will not apply either when the CONTRACTOR is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the CONTRACTOR to be in violation of any Michigan or federal law.
42. Any approvals, acceptances, reviews, and inspections of any nature by MDOT will not be construed as a warranty or assumption of liability on the part of MDOT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under this Contract, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the SERVICES under this Contract.
- Any such approvals, acceptances, reviews, and inspections by MDOT will not relieve the CONTRACTOR of its obligations hereunder, nor are such approvals, acceptances, reviews, and inspections by MDOT to be construed as a warranty as to the propriety of the CONTRACTOR's performance but are undertaken for the sole use and information of MDOT.
43. With regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract, the CONTRACTOR hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The CONTRACTOR shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The CONTRACTOR shall notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract may have occurred or is threatened to occur. The CONTRACTOR shall also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract.

44. The CONTRACTOR and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of the SERVICES under this Contract. "Affiliate" means a corporate entity linked to the CONTRACTOR through common ownership. The CONTRACTOR and its Affiliates agree not to provide any services to a construction contractor or any entity that may have an adversarial interest in a project for which it has provided services to MDOT. The CONTRACTOR and its Affiliates agree to disclose to MDOT all other interests that the prime or sub consultants have or contemplate having during each phase of the project. The phases of the project include, but are not limited to, planning, scoping, early preliminary engineering, design, and construction. In all situations, MDOT will decide if a conflict of interest exists. If MDOT concludes that a conflict of interest exists, it will inform the CONTRACTOR and its Affiliates. If the CONTRACTOR and its Affiliates choose to retain the interest constituting the conflict, MDOT may terminate the Contract for cause in accordance with the provisions stated in this Contract.
45. Any public relations communications and/or products pertaining to this Contract or the SERVICES hereunder that are intended for an external audience will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. Examples of public relations communications and/or products may include the following:
 - a. Use of the MDOT logo;
 - b. Brochures, flyers, invitations, programs, or any other printed materials intended for an external audience;
 - c. Postings on social media sites or Web sites;

- d. New or updated video, digital versatile disk (DVD), or video sharing productions;
- e. Exhibits or presentations.

A violation of this provision constitutes a breach of this Contract and the prequalification rules, and MDOT may terminate this Contract under the provisions of Section 24(b).

- 46. This Contract will be in effect from the date of award through «ENDCON». Costs incurred outside of the term of this Contract will not be eligible for reimbursement.
- 47. Prior to expiration, the time for completion of performance under this Contract may be extended by MDOT upon written request and justification from the CONTRACTOR. Upon approval and authorization by MDOT, a written time extension amendment will be prepared and issued by MDOT. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
- 48. In case of any discrepancies between the body of this Contract and any exhibits hereto, the body of this Contract will govern.

49. This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CONTRACTOR and of MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CONTRACTOR, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

«VENDOR»

By: _____
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title: Department Director